REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed May 4, 2006. Through this response, claims 1, 58, 60-64, 67-79, 82, 83, 92, 99, 102, 103, 109, and 112 have been amended, and claims 2 and 59 have been canceled without prejudice, waiver, or disclaimer. Reconsideration and allowance of the application and pending claims 1, 3-58, and 60-128 are respectfully requested.

I. Specification Amendments

Various amendments have been made to the specification through this response to provide consistency in reference numerals between Figure 9 and the specification, as well as to correct typographical errors. Although these amendments effect several changes to the specification, it is respectfully asserted that no new matter has been added.

II. Claim Rejections - 35 U.S.C. § 102(b)

A. Statement of the Rejection

Claims 1-4, 9-14, 16-20, 58-63, 73-75, and 77-81 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by *Payton* ("*Payton*," U.S. Pat. No. 5,790,935). Applicants respectfully submit that the rejection has been rendered moot in view of the amendments to independent claims 1 and 58, and further submit that the claims as amended (and their respective dependents) are allowable over *Payton*.

B. Discussion of the Rejection

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b).

In the present case, not every feature of the amended claims is represented in the *Payton* reference.

Independent Claim 1

Claim 1 recites (with emphasis added):

> 1. A dual mode file system in a subscriber network television system, comprising:
> a digital home communication terminal (DHCT) comprising:
> a memory with logic; and
> ***a processor configured with the logic to determine whether a local file system is coupled to the DHCT,*** the processor further configured with the logic to, responsive to determining that the local file system is not coupled to the DHCT, use remote data from a virtual file system to support the processor, the processor further configured with the logic to, responsive to determining that the local file system is coupled to the DHCT, use local data stored in the local file system and the remote data from the virtual file system to support the processor.

Applicants respectfully submit that *Payton* fails to disclose, teach, or suggest at least the above-emphasized features, and thus Applicants respectfully submit that independent claim 1 is allowable over *Payton*.

Because independent claim 1 is allowable over *Payton*, dependent claims 3-57 are allowable as a matter of law for at least the reason that the dependent claims 3-57 contain all elements of their respective base claim. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Independent Claim 58

Claim 58 recites (with emphasis added):

> 58. A dual mode file method in a subscriber network television system comprising the steps of:
>
> ***determining whether a local file system is coupled to a digital home communication terminal (DHCT)***;
>
> responsive to determining that the local file system is not coupled to the DHCT, using remote data from a virtual file system to support a processor in the DHCT; and
>
> responsive to determining that the local file system is coupled to the DHCT, using local data stored in the local file system and the remote data from the virtual file system to support the processor.

Applicants respectfully submit that *Payton* fails to disclose, teach, or suggest at least the above-emphasized features, and thus Applicants respectfully submit that independent claim 58 is allowable over *Payton*.

Because independent claim 58 is allowable over *Payton*, dependent claims 60-103 are allowable as a matter of law.

III. Claim Rejections - 35 U.S.C. § 102(e)

A. Statement of the Rejection

Claims 1, 4, 15, 21-25, 27-36, 38, 48, 49, 58, 59, 64-68, 76, 82, 83, 85-92, 94, 102-110, 119, 121, and 127 have been rejected under 35 U.S.C. § 102(e) as allegedly anticipated by *Daniels* ("*Daniels*," U.S. Pat. No. 6,973,669). As to independent claims 1, 58, and 109 (and corresponding dependent claims), Applicants respectfully submit that the amendments to independent claims 1, 58, and 109 have rendered the rejection moot, and that the claims as amended (and their respective dependents) are allowable over *Daniels*. Additionally, Applicants respectfully traverse the rejection to claims 104-108, 121, and 127.

B. Discussion of the Rejection

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

In the present case, not every feature of the amended claims is represented in the *Daniels* reference.

Independent Claim 1

Applicants respectfully submit that *Daniels* fails to disclose, teach, or suggest at least the ***a processor configured with the logic to determine whether a local file system is coupled to the DHCT***, and thus Applicants respectfully submit that independent claim 1 is allowable over *Daniels*.

Because independent claim 1 is allowable over *Daniels*, dependent claims 3-57 are allowable as a matter of law.

Independent Claim 58

Applicants respectfully submit that *Daniels* fails to disclose, teach, or suggest at least ***determining whether a local file system is coupled to a digital home communication terminal (DHCT)***, and thus Applicants respectfully submit that independent claim 58 is allowable over *Daniels*.

Because independent claim 58 is allowable over *Daniels*, dependent claims 60-103 are allowable as a matter of law.

Independent Claim 104

Claim 104 recites (with emphasis added):

> 104. A media client device comprising:
> a memory;
> a plurality of tuners; and
> a processor configured with the memory to ***transition from supporting playback of media content from a virtual file system to a combination of the virtual file system and a local file system depending on the availability of the local file system.***

Applicants respectfully submit that *Daniels* fails to disclose, teach, or suggest at least the above-emphasized features. For instance, there is no discussion in *Daniels* with regard to the ***availability*** of a local file system and a ***transition*** for playback support ***based on the availability*** of a local file system. Thus, Applicants respectfully request that the rejection to independent claim 104 be withdrawn.

Because independent claim 104 is allowable over *Daniels*, dependent claims 105-108 are allowable as a matter of law.

Independent Claim 109

Claim 109 recites (with emphasis added):

> 109. A hyper-linked data caching system comprising:
> a memory; and
> a processor configured with the memory to ***cache hyper-linked data in a data structure indexed by time of presentation within a corresponding media content instance.***

Applicants respectfully submit that *Daniels* fails to disclose, teach, or suggest at least the above-emphasized features. The Office Action refers to col. 4, lines 23-38 and col. 24, lines 13-34, and alleges that the hyper-links are received and stored in order. These sections are reproduced below:

[col. 4/23-28]Further, the present invention(s) utilizes the vertical blanking interval (VBI) of a television program to carry Internet sites, Internet addresses or other related information that is a relevant to the television program (or television commercial). The VBI is a portion of the television signal that does not contain program information, it is typically used for services such as closed-captioning.

[col. 24/13-34] A number of such hyper linked pages can be downloaded and cached by the inventive multi-featured multi-media appliance 1000 during the reception of the television program, the data can be streamed in the background carried in the VBI of the television signal that includes the viewed television program, via and Internet net, or by simultaneously tuning into a data channel carried along with. the television channels supplied by the television system provider. As illustrated, some of the hyperlinks can also be linked to an Internet site, such as a world wide web site that includes more information relevant to the product advertised in the television commercial.

FIG. 11 illustrates the information that might be displayed with the user actives one of the Internet hyperlinks included with an interval page. In this case. the information is in the form of a world wide web page with hyperlinks to other world wide web pages, as well as hyperlinks back to the interval site. If the user's multi-featured multi-media appliance includes a computer hard drive, or other digital storage medium, then the some or all of the interval site can be pre-loaded before the commercial, allowing for very fast perusing of the information related to the advertised product.

Applicants respectfully note that there is no reference to a ***data structure***, nor any reference to how hyper-links are ***indexed*** in a data structure. Thus, Applicants respectfully submit that independent claim 109 is allowable over *Daniels*.

Because independent claim 109 is allowable over *Daniels*, dependent claims 110-120 are allowable as a matter of law.

Independent Claim 121

Claim 121 recites (with emphasis added):

> 121. A hyper-linked data caching method comprising the steps of:
> receiving hyper-linked data corresponding to a media content instance; and
> ***maintaining the hyper-linked data in a data structure indexed by time of presentation within the corresponding media content instance.***

For similar reasons presented in association with independent claim 109, Applicants respectfully submit that *Daniels* fails to disclose, teach, or suggest at least the above-emphasized features. Thus, Applicants respectfully request that the rejection to independent claim 121 be withdrawn.

Because independent claim 121 is allowable over *Daniels*, dependent claims 122-128 are allowable as a matter of law.

IV. Claim Rejections - 35 U.S.C. § 102(e)

Claims 1, 4, 36, 37, 39-47, 58, 59, 92, 93, and 95-101 have been rejected under 35 U.S.C. § 102(e) as allegedly anticipated by *Schein et al.* ("*Schein*," U.S. Pat. No. 6,002,394). Applicants respectfully submit that the rejection has been rendered moot in view of the amendments to independent claims 1 and 58, and further submit that the claims as amended (and their respective dependents) are allowable over *Schein*.

Independent Claim 1

Applicants respectfully submit that *Schein* fails to disclose, teach, or suggest at least ***a processor configured with the logic to determine whether a local file system is coupled to the DHCT***, and thus Applicants respectfully submit that independent claim 1 is allowable over *Schein*.

Because independent claim 1 is allowable over *Schein*, dependent claims 3-57 are allowable as a matter of law.

Independent Claim 58

Applicants respectfully submit that *Schein* fails to disclose, teach, or suggest at least ***determining whether a local file system is coupled to a digital home communication terminal (DHCT)***, and thus Applicants respectfully submit that independent claim 58 is allowable over *Schein*.

Because independent claim 58 is allowable over *Schein*, dependent claims 60-103 are allowable as a matter of law.

V. Claim Rejections - 35 U.S.C. § 103(a)

A. Statement of Rejection

Claims 50-57, 111-118, 120, 122-126, and 128 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Daniels* in view of *Shimoji et al.* ("*Shimoji*," U.S. Pat. No. 6,757,911). Claims 26 and 84 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Daniels*. Claims 5-8 and 69-72 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Payton*. As to the rejection using *Daniels* in view of *Shimoji* to claims 50-57, 111-118, and 120, Applicant respectfully submit that the rejection has been rendered moot in view of the amendments to independent claims 1, 58, and 109, and further that the claims as amended (and the respective dependent claims) are allowable over the art of record. Additionally, Applicants respectfully traverse the rejections to claims 5-8 and 69-72, 26, 84, 122-126, and 128, and respectfully request that the rejections be withdrawn.

B. Discussion of the Rejection

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, Applicants respectfully submit that a *prima facie* case for obviousness has not been established or the rejection has been rendered moot as explained above.

Rejection to claims 50-57, 111-118, and 120

As explained above, Applicants respectfully submit that *Daniels* fails to disclose, teach, or suggest at least ***a processor configured with the logic to determine whether a local file system is coupled to the DHCT***, as recited in independent claim 1, or "a processor configured with the memory to ***cache hyper-linked data in a data structure indexed by time of presentation within a corresponding media content instance***," as recited in independent claim 109. *Shimoji* fails to remedy these deficiencies. Since *Daniels* in view of *Shimoji* fails to

disclose, teach, or suggest at least the features of claims 1 and 109 as incorporated into respective dependent claims 50-57, and 111-118, 120, dependent claims 50-57, and 111-118, 120 are allowable over the combination.

Rejection to Claims 122-126, and 128

As explained above, *Daniels* fails to disclose at least ***maintaining the hyper-linked data in a data structure indexed by time of presentation within the corresponding media content instance***. *Shimoji* fails to remedy these deficiencies. Since *Daniels* in view of *Shimoji* fails to disclose, teach, or suggest at least the features of claim 121 incorporated into claims 122-126, and 128, dependent claims 122-126, and 128 are allowable over the combination. Thus, Applicant respectfully requests that the rejection to dependent claims 122-126, and 128 be withdrawn.

Rejection to Claims 26 and 84

The Office Action has provided the following assertions of Official Notice:

> The examiner takes Official Notice that it was notoriously well known in the art at the time of the invention by applicant for a television receiver to utilize both an analog and digital transmission channel, such as when receiving both off-air television and digital satellite, for the typical benefit of providing a viewer with an increased amount of information and content by allowing access to both digital and analog content providers and connections.

With regard to the finding of well-known art and Official Notice as directed to claims 26 and 84, Applicants respectfully traverse these findings and submit that the subject matter pertaining to these claims should not be considered well-known. For instance, these is no suggestion or teachings of such features in *Daniels*. The emphasis in *Daniels* on carrying information via the vertical blanking interval (VBI) would suggest that one skilled in the art, "at the time of the invention by the applicant," (emphasis added) would not consider it well-

known to utilize both a digital and analog transmission channel. In view of *Daniels*, Applicants respectfully submit that the taking of Official Notice of using digital and analog transmission channels has more the benefit of improper hindsight reasoning than the state of the art at the time of Applicants' invention. As provided in MPEP § 2144.03:

> Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424, F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

As provided in MPEP § 2144.03 (emphasis added):

> If applicant adequately traverses the examiner's assertion of official notice, *the examiner must provide documentary evidence in the next Office action* if the rejection is to be maintained. See 37 CFR 1.104(c)(2).

Applicants respectfully submit that in the context of the claim language, such a finding of well-known art is improper given the reasons above, including the added complexity associated with such features as described in independent claims 1 and 58, in addition to claims 26 and 84 which incorporate the features of their respective independent claims 1 and 58. Accordingly, Applicants traverse the assertions with regard to well-known use and Official Notice. Because of this traversal, the Office must support its findings with evidence, or withdraw the well-known determination.

Additionally, Applicants respectfully submit that the rejection should be withdrawn for at least the reason that *Daniels* does not disclose, teach, or suggest the features of independent claims 1 and 58 incorporated into respective dependent claims 26 and 84.

Rejection to Claims 5-8 and 69-72

The Office Action has provided the following assertions of Official Notice:

> The examiner takes Official Notice that it was notoriously well known in the art at the time of the invention by applicant [sic] a computer system to identify the current operating status of components, such as operability and connection, for the typical benefits of detecting whether problems exist within a system and if action needs to be taken.

With regard to the finding of well-known art and Official Notice as directed to claims 5-8 and 69-72, Applicants respectfully traverse these findings and submit that the subject matter pertaining to these claims should not be considered well-known. Applicants note that *Payton* was cited as the art to be used in combination with the Official Notice, but that a description referring to *Daniels* is described on page 26. With regard to *Payton* (or any of the art of record), these is no suggestion or teachings of identifying connections to local file systems and making determinations based on the existence or absence of such connections. In other words, taken within the context of the entire claim pertaining to DHCTs in a subscriber system, the features are not merely detecting connections (though that feature alone has not been shown), but detecting the existence or absence of such connections to determine from where a processor in a DHCT is to access data. The systems described in the art of record appear to perform from the presumption of existing local storage, and hence performance based on a mix of higher performance systems and legacy type systems in a subscriber network does not appear to be a consideration.

Applicants respectfully submit that in the context of the claim language, such a finding of well-known art is improper given the reasons above, including the added complexity associated with such features as described in independent claims 1 and 58, in addition to claims 5-8, and 69-72 which incorporate the features of their respective independent claims 1 and 58. Accordingly, Applicants traverse the assertions with regard to well-known use and Official Notice. Because of this traversal, the Office must support its findings with evidence, or withdraw the well-known determination.

Additionally, Applicants respectfully submit that the rejection should be withdrawn for at least the reason that *Payton* does not disclose, teach, or suggest the features of independent claims 1 and 58 incorporated into respective dependent claims 5-8 and 69-72.

In summary, it is Applicants' position that a *prima facie* for obviousness has not been made against Applicants' claims. Therefore, it is respectfully submitted that each of these claims is patentable over the art of record and that the rejection of these claims has been rendered moot or that the rejections should be withdrawn.

VI. Canceled Claims

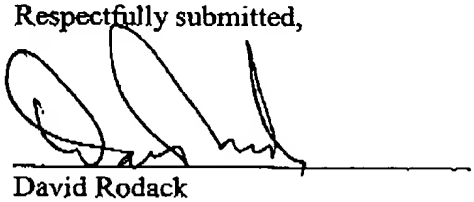
As identified above, claims 2 and 59 have been canceled without prejudice, waiver, or disclaimer. Applicants reserve the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

CONCLUSION

Applicants respectfully submits that Applicants' pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all

pending claims are hereby courteously requested. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



David Rodack
Registration No. 47,034

THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500

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